

MEMORANDUM

DATE: April 11, 2008

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell
Chairperson
State Council for Persons with Disabilities

RE: H.B. 302 [Organ Donations]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 302 which allows a person to opt-out of the organ and tissue donation process. SCPD has the following observations.

First, the current Delaware Code allows applicants for a driver's license or identification card to designate themselves as an organ donor. Title 16 Del.C. §2724. That designation on the license authorizes a gift of organs upon death with no further consent. Title 16 Del.C. §2727. The bill would substitute a system in which the license/identification card application process would include a notice that unless the applicant affirmatively opted out, the individual would be deemed to have consented to organ donation.

Second, the rationale for switching to an "opt out" or "presumed consent" approach to organ donation is that there is a shortage of organ donors and "opt out" systems adopted in some other countries (e.g. Belgium and Austria) have increased the number of donors. See attached articles. Third, opposition to a "presumed consent" approach to organ donation has generally focused on ethical issues and lack of popular support. In England, a "presumed consent" bill failed by a 307-60 vote. In a 2005 national survey in the United States, most respondents either opposed (26.7%) or strongly opposed (30.1%) a presumed consent approach to organ donation. See attachments. A few years ago the American Medical Association (AMA) declined to support an "opt out" approach to organ donation. Instead, the AMA recommended some pilot projects to assess the effects of a "presumed consent" approach. The AMA also commented as follows: "Unless there are data to suggest a positive effect on donation, neither presumed consent nor mandated choice for deceased donation should be widely implemented." See attached AMA Council on Ethical and Judicial Affairs Opinion E.2.155.

In a nutshell, reasonable persons could support or not support "presumed consent" legislation in the context of organ donation. Consistent with the 2005 Executive Summary to the 2005 national survey (attached), the percentage of Americans consenting to organ donation increased from 55% in 1993 to 72% in 2005. Therefore, the national trend, without "presumed consent", is clearly towards more persons voluntarily opting to be organ donors. H.B. 302 recites that 38% of Delaware applicants for licenses and identification cards have opted to be organ donors (lines 12-14). SCPD

suspects that with better advertising and more information, this percentage would likely increase. Therefore, does not support H.B. 302 in favor of supporting an information campaign to increase the percentage of donors without resorting to a controversial “opt out” system.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Ruth Ann Minner
 Governor’s Advisory Council for Exceptional Citizens
 Developmental Disabilities Council

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